Bail Slip

Jothi @ Jothi Ratchagadas, the Appellant/Accused was released on bail by the orders of the Court dated 18.04.2000 and made in Crl.M.P.No.1925/2000 in Criminal Appeal No.847/99.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2005

Coram

The Hon'ble Mr. Justice N.DHINAKAR
and
The Hon'ble Mr. Justice M.CHOCKALINGAM

Criminal Appeal No.847 of 1999

Jothi @ Jothi Ratchagadas . Appellant/Accused

Vs.

State by
The Inspector of Police,
Villupuram Taluk Police Station,
Villupuram. .. Respondent/Complainant

Criminal Appeal against the judgment of the Principal Sessions Judge, Villupuram in S.C.No.193 of 1998 dated 08.06.1999.

For Appellant .. Mr.Sundar, Sr. Counsel
for M/s.K.Ramani

For Respondent .. Mr.S.Jayakumar,
Addl. Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM, J.)

The sole accused in a case of murder, on being found guilty as per the charges and sentenced to undergo life imprisonment under Section 302 I.P.C. and six months rigorous imprisonment under Section 323 I.P.C. (2 counts), by the learned Sessions Judge, Villupuram in S.C.No.193 of 1998, has brought forth this appeal.

2.The short facts necessary for the disposal of the appeal can be stated thus:

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(a)P.W.1 is the son and P.W.2 is the wife of the deceased. They were residents of Theli Colony. The appellant/accused was also

residing in a house nearby. On 18.04.1997, P.W.1 was chaining the cattle, which has been questioned by the appellant, due to which, a quarrel arose and the accused made an attempt to assault P.W.1 and on hearing the cry, P.W.2 and her husband came out of the house. When the deceased questioned the conduct of the accused, immediately, the accused attacked the deceased with a wooden reaper, as a result of which, he fell down. While P.W. 2 interfered, she was also attacked by the accused with wooden reaper. Immediately, he went away from the place of occurrence.

(b) P.W.1 took both P.W.2-his mother and his father/deceased to a private hospital run by P.W.6. P.W.6 informed his inability to attend them. Then, both of them were taken to the Government Hospital, Villupuram. P.W.10, the Doctor attached to the Government Hospital, Villupuram examined the deceased, found the following injuries and issued a wound certificate Ex.P11:

1.Laceration over scalp in the fronto parietal region vertically 6 cm x 1 cm x 1 cm.

2.Contusion right occipital region 4 cm x 3 cm

(c) P.W.11, the Doctor attached to the Government Hospital, Villupuram, on 17.04.1997 at about 9.50 p.m., has examined P.W.1, who was sent along with a requisition, and issued a wound certificate Ex.P15. Since the condition of the deceased was serious, he was directed to be taken to JIPMER Hospital, Pondicherry. Accordingly, he was taken to the JIPMER Hospital, Pondicherry and P.W.7, the Head Constable, attached to Villupuram West Police Station gave information to the Villupuram Taluk Police Station in respect of the admission of the deceased Mariasavari and P.W.13, the Head Constable, attached to Villupuram Taluk Police Station received the information at 11.45 p.m. on 16.04.1997 and proceeded to the hospital at 1.45 a.m. On 17.04.1997, he recorded the statement of P.W.1, marked as Ex.P17, on the strength of which, a case came to be registered by the respondent police in Crime No.403 of 1997 for the alleged offences under Sections 323 and 307 I.P.C. Printed First Information Report Ex.P18 was despatched to the concerned Court.

(d) On receipt of the copy of the same, the Investigating Officer P.W.14, took up the investigation and proceeded to the scene of occurrence. He made an inspection in the presence of two witnesses and prepared an observation mahazar under Ex.P2 and a rough sketch Ex.P19. Material objects viz., sample earth and blood stained earth were seized under a mahazar and when P.W.14 came to know that the deceased who was admitted in the JIPMER hospital, Pondicherry died, for which, an intimation was also received, he converted the case into one under Section 302 I.P.C. and the amended First Information Report, Ex.P21 was despatched to the Court. He proceeded to the mortuary and conducted inquest on the dead body of the deceased in the presence of witnesses and panchayatdars and prepared Ex.P22, the inquest report.

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(e) Pursuant to the request by the Investigating Officer, P.W.12, the Doctor attached to the JIPMER Hospital, Pondicherry conducted

autopsy on the dead body of the deceased and found the following injuries:

1.A partially healed and sutured wound (black sutures) is seen present on the left parietal region of the vault, near the midline, antero-posteriorly placed, 7 cms in length, Pus, whitish in colour is seen oozing from the wound.

2.An abrasion, dark reddish brown in colour, is seen present just on the right side of the injury no.1 mentioned above, antero-posteriorly placed, 7 cm x 0.5 cm.

3.An abrasion is seen present on the right occipital region 3 cm away from the occiput, antero-posteriorly placed, 2 cm x 1 cm pus whitish in colur is seen present.

He has issued a post mortem certificate Ex.P16, wherein he had opined that the deceased died on account of head injury.

(f)The material objects recovered from the place of occurrence and from the dead body were all sent to the Court and they were subjected to chemical analysis by the Forensic Sciences Department, upon the requisition given by the Judicial Magistrate concerned. Chemical Report Ex.P9 and Serological Report Ex.P10 were received by the Court. P.W.14 arrested the accused at 3.30 p.m. on 18.04.1997 and the accused was produced before the Court and remanded to judicial custody. On completion of the investigation, the Investigating Officer filed the final report before the Court. The case was committed to Court of Sessions viz., the Sessions Court, Villupuram and necessary charges were framed.

3.In order to substantiate the charges levelled against the accused, the prosecution examined 15 witnesses and relied on 22 exhibits and 7 material objects. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of the witnesses. The accused/appellant flatly denied the same as false. No defence witnesses were examined.

4.The learned trial Judge after considering the submissions made and on scrutiny of the materials available, found the appellant/accused guilty of the offences under Sections 302 and 323 I.P.C. (2 counts) and awarded life imprisonment and six months rigorous imprisonment on each count respectively, which is the subject matter of challenge in this appeal.

5.Learned counsel appearing for the appellant/accused inter alia submitted that in the instant case, the original first information report has been suppressed. According to P.W.7, he received the information but he passed on the same to P.W.13, the Head Constable, attached to Villupuram Taluk Police Station. Apart from that, there has been a delay of 10 hours in the registration of the case and it has fatally affected the prosecution case. The prosecution has not brought forth any satisfactory explanation regarding these aspects

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before the lower Court. When the condition of the deceased was found to be so serious, his dying declaration should have been recorded; but, the same was not done. Likewise, weapon of crime has also not been recovered and subjected to chemical analysis and under the circumstances, the lower Court should have acquitted the accused.

6.Learned counsel further advancing his argument would submit that even assuming that the case of the prosecution that it was the accused who attacked the deceased with a wooden reaper is true, the act of the accused would not fall within the ambit of murder, for the reason that it was done due to the sudden quarrel. Even as per the evidence of P.W.2, on the date of occurrence, P.W.1 and the accused were quarrelling and after hearing the cry, the deceased and herself came out of the house and witnessed the quarrel and at that juncture, the deceased interfered and on sudden provocation, the accused attacked the deceased. It was only due to the sudden provocation, the accused had attacked the deceased and that too, with a weapon viz., the wooden reaper, which was available at the place of occurrence, which would indicate that the act of the accused was neither deliberate nor wanton nor premeditated, but due to sudden provocation and therefore, he submits that the benefit under Section 300 I.P.C. should be given to the accused in the instant case.

7.Heard the learned counsel for the State on the above contentions.

8.It is not in controversy that the deceased Mariasavari, who was attacked at the scene of occurrence, was taken to a private clinic of P.W.6 and on his refusal to attend him, he was taken to the Government Hospital, Villupuram, where he was treated by P.W.10 and the Wound Certificate is marked as Ex.P11. Since his condition was serious, he was taken to JIPMER Hospital, Pondicherry, where he succumbed to the injuries caused to him and following inquest, the dead body was subjected to autopsy by P.W.12 and post mortem certificate, Ex.P16 has also been marked, wherein it has been clearly opined that the deceased died on account of head injury and sufficient evidence was placed before the trial Court to hold that Mariasavari died out of homicidal violence. It is also pertinent to point out that the appellant/accused never questioned the said fact either before the lower Court or before this Court and hence it could be safely held that the deceased died on account of homicidal violence.

9.In order to substantiate the charge of murder, the prosecution examined P.Ws. 1 and 2. It is true that P.W.1 is the son and P.W.2 is the wife of the deceased. In the instant case, they were not only eye witnesses but P.W.1 is also an injured witness. There was a charge against the accused under Section 307 I.P.C. in respect of the attack made by him on P.W.2 and both the witnesses viz., P.Ws.1 and 2 have categorically spoken to the fact in one voice that it was the accused who attacked the deceased at the time of the occurrence. Apart from that, in respect of the injury sustained by P.W.2, medical evidence has also been brought forth. Ex.P11 is the Wound Certificate in respect of the deceased issued by P.W.10, the Doctor attached to Villupuram Government Hospital and in Ex.P14, the place and time of

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occurrence were stated and apart from that, it is also clearly stated that one known person attacked him with a thadi. Apart from the evidence what is available, the prosecution, in order to prove the act of the accused that he attacked the deceased with wooden reaper at the time of occurrence, has examined P.Ws.1 and 2, who have clearly spoken about the incident. The medical evidence in the instant case was in corroboration with the ocular testimony. Hence, the lower Court felt no difficulty in holding that it was the accused who committed the crime. This Court is unable to see any merits in any one of the contentions put forth by the learned counsel for the appellant.

10. According to the prosecution, P.W.7, the Head Constable, attached to Villupuram West Police Station passed on the information to Villupuram Taluk Police Station, where P.W.13, the Head Constable, was on duty at that time. What are all the information received by him at that time was only the admission of Mariasavari in the hospital and nothing more and there is no material available to show that any information in respect of the cognizable offence was received and it was also recorded. In the absence of the same, it cannot be stated that any first information has been given and the same was suppressed.

11.Secondly, it is contended that in the instant case, dying declaration has not been recorded. The deceased who sustained injuries, was taken to the private clinic, therefrom, to the Government Hospital, Villupuram and then, he was taken to JIPMER Hospital, Pondicherry. In the natural course of events, dying declaration has not been recorded. But that cannot be a reason to reject the prosecution case and apart from that in the instant case, it is true that the occurrence took place on 16.04.1997 at 5.30 p.m. and the case was registered at 1.45 a.m. on 17.04.1997. Thus the delay is noticed and the prosecution has explained that the delay was caused due to the natural course of events. This Court is of the view that in any way it will cause no prejudice to the appellant since the delay has been satisfactorily explained. The Court is unable to agree with the contentions put forth by the learned counsel for the appellant.

12.From the evidence of P.W.2, it would be quite clear that at the time of occurrence, herself and the deceased were inside the house and on hearing the cry, they came out of the house. Both of them saw the accused quarrelling with P.W.1 and when the deceased interefered, due to sudden provocation, the accused took the wooden reaper and attacked him and taking into consideration of the facts and circumstances, it would be quite clear that the accused has acted due to sudden provocation. Under such circumstances, it would not fall within the ambit of murder, but would fall within the Exception 1 to Section 300 I.P.C.

13.Taking into consideration the nature of injuries caused originally, the weapon used i.e. wooden reaper, and the act done by the accused due to sudden provocation knowing very well that by his act, death was likely to be caused, this Court is of the opinion that ends of justice would be met if the offence under Section 302 I.P.C. is modified to one under Section 304 (Part II) I.P.C., for which, the

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appellant/accused shall undergo five years rigorous imprisonment. Accordingly, the judgment of the trial Court convicting the appellant and awarding a sentence of life imprisonment for the offence under Section 302 I.P.C. is set aside and in its place, the accused is convicted under Section 304 (Part II) I.P.C. carrying a sentence of 5 years rigorous imprisonment.

14.In the result, with the above modification in conviction and sentence, this Criminal Appeal is dismissed.

15. It is reported that the accused is on bail. The Learned Sessions Judge shall take steps to commit the accused to undergo the remaining period of sentence.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To
1.The Principal Sessions Judge, Villupuram.

2.The Judicial Magistrate No.I, Villupuram.

3.-do- through Chief Judicial Magistrate,
Villupuram.

4.The Judicial Magistrate No.I, Nagercoil.

5.-do- through Chief Judicial Magistrate,
Nagercoil.

6.The District Collector,
Villupuram District.

7.The Director General of Police,
Mylapore, Chennai.

8.The Superintendent, Central Prison,
Cuddalore.

9.The Public Prosecutor, High Court,
Madras.

10.The Inspector of Police,
Villupuram Taluk Police Station,
Villupuram.

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